

APPENDIX A

Allen, Peter V.

From: Fox [dan-anne@cox.net]
Sent: Friday, November 19, 2004 12:17 PM
To: pva@cpuc.ca.gov
Subject: [Fwd: Application 04-07-049 - SDG&E selling property in City of San Juan Capistrano to Whispering Hills LLC]

Honorable Peter V. Allen:

I'm not sure if you could open the link to my previous email I sent regarding this applicaton and your previous ruling on this. Please take this into consideration if appropriate for you to do so. Thank you for your time.

Anne Fox

----- Original Message -----

Subject:Application 04-07-049 - SDG&E selling property in City of San Juan Capistrano to Whispering Hills LLC
Date:Fri, 19 Nov 2004 12:03:55 -0800
From:<CPUC.OnLine.Feedback.Form@cpuc.ca.gov>
Reply-To:<dan-anne@cox.net>
To:<dan-anne@cox.net>

I received a packet of information concerning the subject application that is before the PUC for a decision or ruling on. The packet was sent to me because I had responded to the previous EIR prepared for a combined housing development and high school project where there exists transmission corridors. I am not sure that I completely understand what is before the Commission but I understand that the comment period for public review of their pending application was extended. I would like for the Commission to consider a couple of items if relevant to your authority in the decision making process. First, I noticed that the comps that were given for the sale and purchase do not include the most recent sale of 50+ acres to the local School District at roughly a cost of \$1 million per acre and that the land was only evaluated based on a less intense zoning designation of Growth Management when in fact it is, and has been for some time, Planned Community with complete entitlements already granted. I don't see how it is in the rate payers best interest for this developer to pay such a small amount per acre. Also, this project met with significant public opposition, so much so, that a referendum initiative was filed and the matter was put to a city-wide vote, where its approval by the local City Council was overturned by the voters. Of course, the developer just waited a year out and ultimately got his approval of the very same project. I thought that these items might be of importance to the Commission, because I don't understand why an expedited process should be granted to this developer. The school district has already recently been granted site plan approval by State authorities regardless of whether the transmission corridor is moved so delaying the approval should not be an issue for the school district. Further, the relocation of severl of the overhead power lines has already occurred in this area and I was not clear whether this was also up for a decision by the Commission. I thank you for your time and consideration.

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From: Mike Mathewson [mathewson@cranksports.com]
Sent: Friday, November 19, 2004 5:46 PM
To: pva@cpuc.ca.gov
Subject: Application 04-07-049

Honorable Peter V. Allen:

I submitted by comments regarding Application 04-07-049 through CPUC web site, but I wanted to make sure that you received a copy as well.

Thank you for your time and consideration.

Mike Mathewson

***** Copy of comments submitted via CPUC web site

As a result of Honorable Peter V. Allen's ruling, I was fortunate enough to receive notice of the 851 application and pending sale of 14 acres from SDG&E to Whispering Hills, LLC. I live and own property 2,000 feet from the land in question and this is the first that I have been made aware of the proposal. In SDG&E's response (July 30, 2004) they took great exception to the requirement to provide adequate service, but I for one want to thank you for watching out for my interest.

That said, in the short time that I have had to attempt to digest the 851 Application, the Administrative Law Judge's Ruling and the applicant's response, I have found several areas that are of deep concern to me. At a minimum I would hope that the application is not granted expedited treatment, and that the public be given more time and opportunity to comment.

I do not claim to be an expert in this area, and this is the first 851 Application that I have ever read. However, I am extremely familiar with other aspects of the project and I have read virtually all of the EIR documentation over the past few years. It appears to me that the primary question raised in the 851 Application is whether or not the sale of SDG&E's land to the developer is in the best interest of the public. To this I can answer emphatically NO.

This entire project was fought intensely by the residents of San Juan Capistrano (not just those of us residing close to the project site). Residents went through the referendum prescribed process at their own expense, being fought all the way by the developer. The referendum went to a city-wide vote where it was passed overwhelmingly by the residents. One year later the City Council approved the very same project with obvious disregard for the voters. Despite the City Council's approval, the voters, neighbors and SDG&E customers have weighed in on this subject loud and clear.

It is difficult to argue against the constant need for more schools, and the applicant is certainly leveraging this fact in the application. However, it should be clear that denying the sale of the land does not place the school project in jeopardy. The school district already purchased the 52 acre parcel (for more than \$50 million) from the developer. SDG&E's land is not being used for the school site.

The only party that will be adversely impacted by the denial of the sale will be the developer. As a matter of fact I would argue that even the developer will not be adversely impacted, because that would assume that the developer is being denied something that it should rightfully be granted. Under what circumstances does a private developer ever have

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more right than anyone else to be given an obvious sweet heart deal? If I was offered the 14 acres in question I would jump at the opportunity to purchase it for \$100,000. The land in question is situated in the rolling hills of San Juan Capistrano adjacent to Million dollar homes and just a couple of miles from the ocean. The land is zoned Planned Community (not the more restrictive Growth Management stated in the application).

When my wife and I bought our home in 1992 we went to great lengths to research the surrounding area, including the land in question. At the time, the land current owned by the developer was owned by UC Regents and we were told by the City that it was open space that could not be built on. However, it was zoned as Growth Management and if development was somehow allowed it would be restricted to a total of 71 homes on 356 acres (1 home per 5 acres). Since then, the developer was able to purchase the entire 356 acres in a sealed bid that no one that I associate with new was taking place, for a little more than \$3 Million total. After pushing the project through the city and side stepping the voter referendum, the developer was able to get the zoning changed to Planned Community, thus allowing more dense development. In addition, less than 15% of the purchased land (52 acres) was sold to the school district of more than \$50 Million. I believe in free enterprise, and power to the developer if he can work within the system and the law to earn a profit. However, when it comes to the land now in question there is absolutely no reason that I can think of that the Commission should reward this developer with land that is not required for the benefit of the public. If the application is denied, it will more than likely mean that the developer will have to redesign the project and relocate the road. This would probably result in fewer homes and less revenue for the developer, but I would hope that would not be justification for approval.

On top of all of these arguments, anyone vaguely familiar with Orange County real estate has to call into question the validity of the "independent" appraisal that placed the value of the land at \$100,000. The lots in my neighborhood (right over the hill from the land in question) average less than 1/4 acre and my insurance carrier places a value on my piece of land (without the structure) at approximately \$500,000. The appraisal is clearly flawed for two obvious reasons. First, the application misstates the current zoning of the land - it is Planned Community, not Growth Management. Second, the appraisal fails to consider THE most comparable land (comp). The land sold to the school district is the most recent transaction and it is immediately adjacent to the land in question, and it sold for \$1 Million/acre (also determined by an independent appraiser). Granted the developer had to provide grading services along with the sale. But why did the appraisal in the application completely ignore this in his study? It certainly makes you wonder.

What seems even more confounding to me is why SDG&E is so eager to go along with this sale. SDG&E has owned the land for 40 years and they are going to recognize a \$26,000 gain? A 33% gain on real estate in Orange County over a 40 year period??? I think there are a few zeros missing. If SDG&E is going to stick by the claim that this is in the interest of the ratepayers, I for one disagree. If they are willing to sell the land then why not open it up to other bidders and see what the market will bare?

One final observation regarding SDG&E response. On page 8 they state that "At the time, however, that SDG&E filed the Advice Letter, it was unknown whether an 851 application would be necessary because the possibility remained that all of the facilities in the transmission corridor would be relocated to the developer's property, thus rendering SDG&E's property no longer used and useful." How can anyone that has seen the plans believe that statement. You have a developer building 140 homes and there is a 150 wide corridor bisecting his land. My home sits

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on a lot that is 70 feet wide and I consider it somewhat private by California standards. To think that the developer would not want this 14 acre parcel is ludicrous. What seems more logical is that it took a while to shape the plan to make it appear that the developer's hands were tied and that the commission had to allow the sale to go through in the best interest of the public.

Through this entire ordeal I have learned quite a bit about local government and how seemingly powerless average citizens are when they go to battle with developers. Eventually the developers wear you out with their resources (time, money and lawyers). I am hopeful that someone in a position of power will finally take a stand and renew my confidence in the system.

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***** End of comments submitted via CPUC web site

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Allen, Peter V.

From: sjcgarden@aol.com
Sent: Saturday, November 20, 2004 6:51 AM
To: pva@cpuc.ca.gov
Subject: Application 04-07-049 filed July 30, 2004

Honorable Peter V. Allen:

Re: Application 04-07-049 filed July 30, 2004

The following comments were sent to Commissioner Brown.

SDG&E did not include the purchase agreement between the Whispering Hills developer and the Capistrano Unified School District for the purchase of land next to the housing development to build a high school. That land SOLD for over a million dollars an acre to the school district.

Agenda item #23 from the 2/10/03 Capistrano Unified School District School Board meeting states that:

Mr. Stephen G. White, MAI, has valued the site at between 51 and 53 million dollars.

The actual real estate purchase agreement between CUSD and Whispering Hills Development should be presented to the California Public Utilities Commission to form a better picture of what the land is worth. Why was this conveniently left out?

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